

Federal Management Regulation

§ 102-38.95

When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

- (1) Inspection.
- (2) Condition and location of property.
- (3) Eligibility of bidders.
- (4) Consideration of bids.
- (5) Bid deposits and payments.
- (6) Submission of bids.
- (7) Bid price determination.
- (8) Title.
- (9) Delivery, loading, and removal of property.
- (10) Default, returns, or refunds.
- (11) Modifications, withdrawals, or late bids.
- (12) Requirements to comply with applicable laws and regulations. 41 CFR part 101-42 contains useful guidance addressing many of these requirements. You should also contact your agency's Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.
- (13) Certificate of independent price determinations.
- (14) Covenant against contingent fees.
- (15) Limitation on Government's liability.
- (16) Award of contract.
- (b) Standard government forms (e.g., Standard Form 114 series) may be used to document terms and conditions of the sale.
- (c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

[68 FR 51421, Aug. 26, 2003, as amended at 73 FR 20803, Apr. 17, 2008]

§ 102-38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including

fixed price sales) are contained in §§102-38.100 through 102-38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

COMPETITIVE SALES

§ 102-38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102-38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102-38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.